

# 5<sup>th</sup> Supplemental Agreement

between

**NETWORK RAIL INFRASTRUCTURE LIMITED**  
as Network Rail

and

**SERCO CALEDONIAN SLEEPERS LIMITED**  
as Train Operator

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relating to amendments to the Track Access Contract  
(Passenger Services) dated 5 March 2015  
Changes to Schedule 8 Appendix 3 – Sustained Poor Performance  
Thresholds

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**THIS 5<sup>TH</sup> SUPPLEMENTAL AGREEMENT** is dated 20 January 2017 and made

**Between:**

- (1) Network Rail Infrastructure Limited, ("Network Rail"), a company registered in England under number 2904587 having its registered office at 1 Eversholt Street, London NW1 2DN; and
- (2) Serco Caledonian Sleepers Limited, (the "Train Operator"), a company registered in Scotland under number SC477821 having its registered office at 1-5 Union Street, Inverness, Scotland, IV1 1PP.

**Background:**

- (A) First ScotRail Limited and Network Rail Infrastructure Limited entered into a Track Access Contract (Passenger Services)(which is hereafter referred to as the "Contract") dated 5 March 2015 in a form approved by the Office of Rail and Road pursuant to section 18(7) of the Act, to which Serco Caledonian Sleepers Limited became a party under the transfer scheme.
- (B) The parties now propose to enter into this Supplemental Agreement in order to amend the Contract as described herein.

**IT IS HEREBY AGREED** as follows:

**1. INTERPRETATION**

In this Supplemental Agreement:

- 1.1 Words and expressions defined in and rules of interpretation set out in the Contract shall have the same meaning and effect when used in this Supplemental Agreement except where the context requires otherwise;
- 1.2 "**Effective Date**" means the first day of the next full Period that commences following the date upon which the Office of Rail and Road issues its approval pursuant to section 22 of the Act of the terms of this Supplemental Agreement (for the purposes of this Supplemental Agreement, "Period" shall have the meaning ascribed to it in Schedule 8 to the Contract).
- 1.3 "**Appendix**" shall mean the appendices and their relevant parts and attached hereto.

## **2. EFFECTIVE DATE AND DURATION**

The amendments made to the Contract pursuant to this Supplemental Agreement shall have effect from the Effective Date and shall cease to have effect at 2359 hours on the Expiry Date or earlier termination of the Contract.

## **3. AMENDMENTS TO THE CONTRACT**

- 3.1 Appendix 3 to Schedule 8 of the Contract shall be deleted and replaced with Appendix A.

## **4. EFFECT OF THIS SUPPLEMENTAL AGREEMENT ON THE CONTRACT**

The Contract, as amended by this Supplemental Agreement, shall remain in full force and effect in accordance with its terms, and during the period in which the amendments made by this Supplemental Agreement are to have effect all references in the Contract to “the contract”, “herein”, “hereof”, “hereunder” and other similar expressions shall, unless the context requires otherwise, be read and construed as a reference to the Contract as amended by this Supplemental Agreement.

## **5. LAW**

This Supplemental Agreement shall be governed by, construed and given effect to in all respects in accordance with the laws of Scotland.

## **6. THIRD PARTY RIGHTS**

No rights shall be conferred under or arising out of this Supplemental Agreement on any person other than the Parties to this Supplemental Agreement and there shall not be created in any circumstances a jus quaesitum tertio in favour of any person.

**7. COUNTERPARTS**

This Supplemental Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original, but all the counterparts shall together constitute one and the same instrument.

**IN WITNESS WHEREOF** this Supplemental Agreement comprising this, the foregoing 2 pages and Appendix A to this Supplemental Agreement, are executed as follows:-

SIGNED on behalf of **NETWORK RAIL INFRASTRUCTURE LIMITED** by  
*DAVID DICKSON* at *GLASGOW* on  
*20 JANUARY 2017* in the presence of:-

Witness: *[Signature]*

Full Name: *NICHOLAS PERRET*

Address: *151 ST VINCENT STREET  
GLASGOW, G2 5NW*

*[Signature]*

SIGNED on behalf of **SERCO CALEDONIAN SLEEPERS LIMITED** by  
*DAVID SIMPSON* at *GLASGOW* on  
*20 JANUARY 2017* in the presence of:-

Witness: *[Signature]*

Full Name: *JOHN FRAME*

Address: *TARA HOUSE  
GLASGOW G2 1HG*

*[Signature]*

## Appendix A

### APPENDIX 3 TO SCHEDULE 8 – SPP THRESHOLD

	<b>Period:</b>	<b>3</b>	<b>6</b>	<b>10</b>	<b>13</b>
2014/15		✗	✗	✗	✗
2015/16		✗	✗	✗	✗
2016/17		✗	✗	✗	✗
2017/18		✗	✗	✗	✗
2018/19		✗	✗	✗	✗